

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels*

SPECIFIC PURPOSE AND NECESSITY

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel

imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

During its February 23, 2011, meeting, the Board determined that it was reasonably necessary to amend Regulation 1533.2 for the specific purposes of ensuring that the regulation reflects that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The Board also determined that it was reasonably necessary to amend Regulation 1598 for the specific purposes of ensuring that the regulation reflects the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011, and prescribing the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any

nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

DOCUMENTS RELIED UPON

Formal Issue Paper 11-002 was submitted to the Board for consideration at its February 23, 2011, Board meeting, and contained staff's recommendation that the Board begin the formal rulemaking process to adopt the proposed amendments to Regulations 1533.2 and 1598. The Board relied upon Formal Issue Paper 11-002, the exhibits to the issue paper, and comments made by Board staff and the Board Members during the February 23, 2011, discussion of the issue paper in deciding to propose the amendments to Regulations 1533.2 and 1598.

ALTERNATIVES CONSIDERED

The Board considered whether to propose the amendments to Regulations 1533.2 and 1598 or, alternatively, whether to take no action at this time due to the uncertainty created by Proposition 26. However, the Board decided to propose the amendments to Regulations 1533.2 and 1598 because they are consistent with current law and it is important for the regulations to accurately reflect the current provisions of the RTC.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.